

## **SEXUAL MISCONDUCT AND HARASSMENT POLICY**

**Holy Cross College prohibits, does not tolerate, will not condone, and takes all reasonable measures to prevent sexual misconduct of any kind.** Sexual misconduct includes, but is not limited to, the following: Sex-Based Harassment; Sexual Harassment; Gender-Based Harassment; Unwelcome Conduct; and Hostile Environment. These unacceptable practices are not tolerated by the College, and are defined as follows:

- Sex-Based Harassment includes sexual harassment and gender-based harassment.
- Sexual Harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.
- Gender-Based Harassment is unwelcome conduct of a nonsexual nature based on a student's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.
- Unwelcome Conduct is conduct considered "unwelcome" if the student did not request or invite it and considered the conduct to be undesirable or offensive. Unwelcome conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a student may have welcomed some conduct does not necessarily mean that a student welcomed other conduct. Also, the fact that a student requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.
- A Hostile Environment exists when sex-based harassment is sufficiently serious to deny or limit the student's ability to participate in or benefit from the College's programs or activities. A hostile environment can be created by anyone involved in a College's program or activity (e.g., administrators, faculty members, students, and campus visitors). In determining whether sex-based harassment has created a hostile environment, the College considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the student who was harassed. The College will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment. The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

### ***Title IX***

The Head of Human Resources serves as the Title IX Coordinator at Holy Cross College. The Title IX Coordinator oversees all Title IX complaints and is available to meet with students as needed. Holy Cross College does not discriminate on the basis of sex in its education programs and activities by choice and in accordance with Title IX. Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator, Gwen DeMaegd, Head of Human Resources, 54515 SR 933 North, Notre Dame IN 46556 574.239.8349, [GDeMaegd@hcc-nd.edu](mailto:GDeMaegd@hcc-nd.edu) or to the Office of Civil Rights.

The College also has three individuals functioning as Deputy Title IX Coordinators to increase accessibility for all.

- Dr. Kelly Jordan serves as the Deputy Title IX Coordinator for students;
- Dr. Justin Watson serves as the Deputy Title IX Coordinator for faculty; and
- Ms. Gwen DeMaegd serves as the Deputy Title IX Coordinator for staff.

Students are free to approach any of these individuals with questions, concerns, and/or to report an actual, alleged, or suspected Title IX incident.

### **Violence Against Women Act Crimes**

**Holy Cross College prohibits all forms of violence, and specifically those identified as crimes by the Violence Against Women Act (VAWA), including dating violence, domestic violence, sexual assault, and stalking.** The specific definitions of these particular crimes are as follows:

Dating Violence: “Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition –

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of “domestic violence”
- Dating violence is explicitly prohibited by our Student Code of Conduct and in our Employee Handbook, and is subject to adjudication accordingly.”

Domestic Violence: “A felony or misdemeanor crime of violence committed –

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.”

Sexual Assault: “An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting (UCR) program.” The notion of consent is of particular importance to this offense.

Stalking: “Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition –

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.”

### ***Important Violence Against Women Act Definitions***

Consent: “The affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter.” This means that, “Under this definition, an individual who was asleep, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or who was under duress, threat, coercion, or force, would not be able to consent. Further, one would not be able to infer consent under circumstances in which consent was not clear, including but not limited to the absence of ‘no’ or ‘stop,’ or the existence of a prior or current relationship or sexual activity.”

Fondling: “The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instance where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.”

Incest: “Sexual intercourse between persons who are related to each other within the degrees where in marriage is prohibited by law.”

Rape: “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

Statutory Rape: “Sexual intercourse with a person who is under the statutory age of consent.” In the state of Indiana, the age of consent is 16.

Dating Violence: Many sexual assaults on college campuses are perpetrated by acquaintances.

- In most cases, at least one of the persons involved is under the influence of alcohol or other drugs. About 75% of male students who take part in acquaintance rapes had been drinking; about 55% of female students had. The best defense is not to drink alcohol.

- Don't assume that anyone is "too nice" to commit sexual assault.
- Carry a cell phone at all times to call for help if needed.
- Avoid being alone especially in unsafe situations and with strangers and persons you don't know well or with whom you don't feel safe.
- Never leave a drink unattended because of "date rape" drugs, which have no odor or color when mixed with drinks.

### ***Sexual Harassment***

**Sexual harassment, which includes sexual violence, is prohibited by College.** Student complaints of sexual discrimination against College employees, other students, or third parties are to be filed with Campus Safety and Security. Accusations of sexual discrimination, sexual harassment, sexual misconduct, or sexual violence against Holy Cross College students, regardless of where the conduct occurred, will be adjudicated in accordance with the policies and procedures outlined in the Student Handbook. Such accusations against College employees or third parties will be addressed by the College administration in accordance with employment law. All such complaints will be investigated impartially, and both parties will have equal opportunity to bring witnesses, evidence, make statements, to be informed simultaneously with the complainant/respondent of the outcome, and to appeal the outcome.

For the purposes of this policy, "proceeding" refers to the standardized and specific process to investigate and adjudicate a complaint, and "result" refers to outcome of the proceeding.

A "preponderance of evidence" standard (i.e., "more likely than not") is used to resolve complaints of sexual discrimination. The College will take steps to stop the harassment, prevent recurrence of harassment, and correct its discriminatory effects on the complainant and others, if appropriate. The College will also take steps to prevent retaliation, and take strong responsive action if it occurs.

Harassment occurs when a person who, with intent to harass, annoy, or alarm another person:

- makes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature.
- makes a telephone call, whether or not a conversation ensues;
- communicates by mail or other form of written communication;
- uses a computer network or other form of electronic communication to transmit an obscene message, or indecent or profane words to a person referring to sexual conduct in an offensive way.

### ***Sexual Offenses***

Sexual offenses are forms of sexual harassment prohibited by Title IX. Sexual behavior of any kind that occurs forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent, is considered to be a sexual offense. Holy Cross College neither tolerates nor condones any form of sexually abusive behavior on the part of its community members, whether physical, mental, or emotional.

More specifically, the **Violence Against Women Act (VAWA) identifies the following actions as crimes** – dating violence, domestic violence, sexual assault, and stalking – and **these actions**, along with any actions that are demeaning to others including, but not limited to, verbal/written harassment, **are specifically, explicitly, and expressly prohibited by the College.**

### ***Victim Rights and Options***

Whether occurring on or off-campus, the College will support student requests for assistance in reporting sexual offenses to local police and/or College officials charged with investigating such conduct. The victim of a sexual offense may choose for the investigation to be pursued through the criminal justice system and the College Student Conduct process, or only the latter. When making the decision of how to proceed, the victim of a sexual offense may wish to consult with and discuss options with his or her hall director, the Director of Residence Life and Housing, the Dean of Students, the Campus Minister, the Director of Counseling and Health Services, his or her parents, close friends, or legal counsel, none of which obligates the student to pursue a particular course of action. In the end, the decision of when, how, and to whom to report an incident and pursue legal action rests entirely with the victim of a sexual offense.

Because a sexual offense is a traumatic experience, the student is encouraged to seek counseling services to help his/her recovery. The College offers counseling to students through the Director of Counseling and Health Services. S.O.S. (Sex Offense Services) is a 24-hour sexual offense crisis agency, with both trained volunteers and professional staff to assist recovery through confidential counseling and other support services.

If a student requests, the College will honor changes in class schedule and/or housing assignment, if reasonably possible and available. Requests for changes should be made through the Dean of Students.

## Complaint Reporting Options

Complainants have reporting options that are confidential and non-confidential, and should be clear on the obligations of the person to whom they are reporting. If a suspected Title IX offense is reported to a non-confidential College official, the College is bound by federal statute to investigate the matter to fullest possible extent, *regardless of the complainant's wishes*.

**Confidential Reporting Options** – sharing information and/or seeking resources from confidential sources will not result automatically in an investigation. The following confidential resources are available to Holy Cross college students:

- Student Counselors – Mr. Tom DeHorn, Director of Student Counseling and Health Services, and Ms. Monique Snelson, Student Counselor; located in room V-174, telephone number (574) 239-8383, and via restricted email at [counselingservices@hcc-nd.edu](mailto:counselingservices@hcc-nd.edu)
- Campus Ministry/Religious – Mr. Andrew Polaniecki, in his role as Campus Minister, and any religious when acting in a pastoral role
- S-O-S of the St. Joseph County Family Justice Center – phone (574) 289-HELP (see below for additional information)

**Non-confidential Reporting Options** – sharing information about an incident of sexual assault, harassment, and/or sexual misconduct will result in an investigation as required by Federal Law. The following non-confidential resources are available to Holy Cross College students:

- College Title IX Coordinators – Ms. Gwen DeMaegd, Dr. Kelly Jordan, Dr. Justin Watson
- Campus Safety and Security – you may approach any Campus Safety and Security officer and/or contact them at (574) 239-8312
- Hall Staff – Hall directors and/or RAs.

## Procedures for Making a Sexual Offense Complaint

A student may wish to file a complaint with the College in addition to or instead of filing a complaint with the local police. Discussing this option with the Dean of Students or the Director of Residence Life and Housing **does not constitute an official report** and **does not obligate** the student to file a formal complaint. To make a formal complaint:

- Requires the student making the complaint – referred to as the complainant – to submit a detailed written statement to a non-confidential College official which describes what occurred and names any persons who participated in or witnessed the alleged offense.
- The accused student – referred to as the respondent – and any known witnesses will also be asked to submit a detailed written statement to the same effect.
- Based upon the findings of the investigation, and in consultation with the Dean of Students, the Director of Residence Life and Housing may elect to handle the matter administratively through a conference or refer the matter to a Title IX Hearing.
- Investigations of alleged sexual offenses will be conducted in a prompt, fair, impartial, and confidential manner, normally completed within 60 calendar days of receiving the official complaint.
- In accordance with Title IX guidelines, a preponderance of evidence standard (i.e., more likely than not) will be employed in determining if a violation has occurred.

Whether occurring on or off-campus, the College will assist students in reporting sexual offenses to local police and/or College officials charged with investigating such conduct. A student may wish to consult with his or her hall director, the Director of Residence Life and Housing, the Dean of Students, the Campus Minister, the Director of Counseling and Health Services, his or her parents, close friends, or legal counsel. In the end, the decision to report the incident and pursue legal action rests entirely with the student.

## Complaint Investigation and Adjudication Procedures

In accordance with the Federal DOE guidelines, cases of alleged sexual offenses, including domestic violence, dating violence, sexual assault, and stalking, the same procedures governing investigations, conferences, and hearings will be observed (**see Procedure for Dealing with a Disciplinary Infraction**), with the same possible outcomes ranging from verbal or written reprimand to expulsion from the College, along with the two following additional procedures:

1. *The complainant and the respondent are entitled to the same opportunities to have an advisor present during a conference or hearing.*
2. *Both the complainant and the respondent will be simultaneously notified in writing of the results of any conference or hearing. This notification will normally take place within seven days of the conference or hearing. Both the respondent and complainant may also appeal the results, be informed of any changes to the results that may occur, and when the results become final.*

Appeals, which may be filed by either the respondent or complainant, must be submitted within three (3) working days of written notification of the conference or hearing outcome.

The Title IX prohibits any retaliatory action or harassment by the respondent (i.e., alleged perpetrator) or his/her associates against a complainant of sexual harassment or violence. Name-calling, taunting, making disparaging remarks, physical/emotional intimidation, and other such inappropriate actions of a harassing nature and/or which make the complainant feel uncomfortable, victimized, harassed, and or threatened – either in person and/or virtually – are among the prohibited actions. Incidents of this nature are to be reported to Campus Safety and Security or the Dean of Students.

### **Information & Support Services for Victims of Rape & Sexual Offenses**

The first priority of a student who has experienced a sexual offense is to get to a place of safety. The student should then obtain necessary medical treatment. The College strongly recommends that a victim of a sexual offense report the incident in a timely manner. A sexual offense should be reported directly to Campus Security, Hall Director, Director of Residence Life and Housing, Dean of Students or any Vice President, or if the offense occurred off-campus, the local police. Speaking with the police **does not obligate** the student to press charges. Filing a police report will ensure that the victim of a sexual offense receives the necessary medical treatment and tests. It also provides the opportunity for timely collection of evidence helpful in prosecution. The victim should avoid showering, douching, using the toilet, or changing clothes before seeking help at the emergency room, as this may destroy physical evidence that could be obtained during the exam.

#### **Sex Offense Services (S-O-S) Rape Crisis Center, South Bend**

[S-O-S](#) is St. Joseph County's rape-crisis center, housed within the Family Justice Center (FJC) of St. Joseph County. S-O-S is **staffed by trained professionals and volunteer advocates** who are **available 24 hours a day/7 days a week**.

S-O-S staff can provide **confidential counseling and recovery services**, as well as support and information about communication with the police, family and friends. S-O-S Volunteer Advocates provide emotional support and information **on the phone and in person at area hospital Emergency Rooms** around the clock. Specially trained professionals offer confidential counseling, group therapy, information, and referrals. S-O-S Advocates can act as a liaison between the victim and the legal process, and **can accompany the victim to court, if desired**.

**You can reach S-O-S by calling 574.289.HELP (574.289.4357).**

#### **St. Joseph County Prosecutor's Office, Special Victim's Unit**

This [specially trained unit](#) of the St. Joseph County [Prosecutor's Office](#) consists of **victim advocates, law enforcement investigators, prosecutors, paralegals**, and other **prosecutorial support staff**. Twelve detectives who are trained and experienced in domestic violence, sexual assault, and child abuse cases come together from the three major police departments in St. Joseph County--the South Bend Police Department, Mishawaka Police Department, and the St. Joseph County Police Department--to **coordinate their efforts and to concentrate on these specific crimes**. They work under a Commander and Assistant Commander and a prosecutorial staff whose expertise is these types of crimes as well.

The **SVU is located on the 2<sup>nd</sup> floor of the Family Justice Center of St. Joseph County (FJC) at 711 E. Colfax, South Bend, Indiana**. The SVU is open 8:00 - 4:30, Monday - Friday. **Phone: 574.235.7818**.

#### **For more information on ways to reduce your risk of sexual assault:**

<http://www.rainn.org/get-information/sexual-assault-prevention>

<http://www.loveisrespect.org/>

<http://www.cdc.gov/Violenceprevention/sexualviolence/index.html>

[National Sexual Assault Hotline](#): 1.800.656.HOPE (1.800.656.4673)

[United States Department of Justice](#):

*“He will give every person what his thoughts and actions deserve. Because of the Lord’s mercy, his people will be happy when he has judged their case. In times of trouble his mercy is as welcome as rain after a long drought.”*  
Sirach 35:19,20